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Committee on Relations with the Host Country

Letter dated 24 September 2002 from the Chairman of the Committee on Relations with the Host Country addressed to the members of the Committee

Please find attached the legal opinion of the Legal Counsel of the United Nations regarding the Parking Programme for Diplomatic Vehicles (see annex). The opinion was requested by the Committee on Relations with the Host Country at its 212th meeting, held on 4 September 2002.

It is being circulated by the Secretariat as an official document of the Committee.

(*Signed*) Sotirios **Zacheos**
Chairman, Committee on Relations with the Host Country
Permanent Representative of the Republic of Cyprus to the United Nations

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Annex

Parking Programme for Diplomatic Vehicles

Note by the Legal Counsel dated 24 September 2002

I. Introduction

1. At the 212th meeting of the Committee on Relations with the Host Country, (hereafter the Committee), held on 4 September 2002, the Committee requested, by consensus, the Legal Counsel to give a legal opinion on the Parking Programme for Diplomatic Vehicles (hereafter the Parking Programme or the Programme) which had been supplied by the United States Mission to the United Nations and circulated by the Chairman of the Committee in document A/AC.154/355. In particular, the Legal Counsel was asked to comment on the compatibility of the Parking Programme with the obligations of the host country and the privileges and immunities of the permanent missions to the United Nations under international law.

2. The present note is in response to that request. For ease of reference the appendix to this note sets out the analysis of the law on privileges and immunities applicable to permanent missions and their personnel that was contained in my 1997 legal opinion on the prior New York City Diplomatic Parking Programme (A/AC.154/307).

3. Before turning to an analysis of the features of the Parking Programme and their legal implications, I wish to reiterate the following statement from my 1997 legal opinion:

> "23. It is my considered opinion that, in accordance with the pertinent provisions of the [Convention on the Privileges and Immunities of the United Nations] (the 1946 Convention), the [Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations] (the Headquarters Agreement) and the [Vienna Convention on Diplomatic Relations] (the (1961) Vienna Convention), diplomatic persons should, as a matter of principle, proper conduct and the good will traditionally demonstrated by the Diplomatic Corps, diligently and scrupulously observe the laws and regulations of the host State, including those pertaining to the operation of motor vehicles, parking and related matters. Non-observance of such laws and regulations reflects badly on the entire diplomatic community and on the Organization itself. The entitlement to diplomatic privileges, immunities and exemptions must not be perceived as indulgence to disregard the laws and regulations of the host country. Compliance by the diplomatic community with the traffic laws and regulations to which the general public is subject, helps to promote the image of diplomats as law-abiding individuals, and of the United Nations itself as an organization whose purposes encompass the development of friendly relations and respect for law.
>
> "24. Flagrant parking violations are incompatible with the intent of the applicable legal instruments as well as with the above-stated purposes of the Organization. Such behaviour is not acceptable for members of the diplomatic corps, the overwhelming majority of whom traditionally maintain high respect for local laws. At no time should entitlement to diplomatic privileges and immunities, exemptions and facilities be perceived as permission to disregard or violate the laws and regulations of the host country."

4. In accordance with article 41(1) of the Vienna Convention, Member States have consistently recognized their duty to respect the laws and regulations of the host State while noting that this duty is without prejudice to the privileges and immunities of diplomats. Thus, while the host State has an obligation to ensure that city, state and federal authorities respect the privileges and immunities of permanent missions and their diplomats, in turn, the permanent missions have an obligation to ensure that their diplomats respect the local laws and regulations of the host City and State.[1] The present note examines the Parking Programme in the light of these two prerequisites.

5. Section II of the note briefly summarizes the main features of the Parking Programme and comments on the consistency of these features with the

responsibilities of the host State and the privileges and immunities of permanent missions and their diplomats under international law. Section III contains final conclusions and recommendations.

6. I should like to emphasize one point at the outset as it affects my entire opinion. The Parking Programme can be considered at two levels. First, it can be considered as a text which establishes the normative arrangements for diplomatic parking in the City. Secondly — and more importantly — is the way in which the Parking Programme *operates in practice*. A legislative programme may be legally unobjectionable from the point of view of a textual analysis but may violate legal obligations because of the way it operates in practice. In my view, therefore, it is crucial that the operation of the Parking Programme be subject to careful review and that its operation be assessed after a reasonable period of time.

II. Features of the Parking Programme

A. Scope (paras. 1 and 2 of the annex to A/AC.154/355)

7. The Parking Programme is intended to apply to motor vehicles bearing federal licence plates in the "D" and "A" series (A/AC.154/355, para. 3). The "D" series of licence plates are issued to the members of the diplomatic staff of the permanent missions accredited to the Organization. The "A" series of licence plates are issued to the United Nations Secretariat, including the motor vehicles of a very limited number of senior officials of the Organization entitled to diplomatic status in the host country. The "C" series of licence plates are issued to the consular corps and are covered by a separate Parking Programme. However, as consular posts are established on a bilateral basis, they do not concern the Organization. Consequently, they are not dealt with in the present legal opinion.

8. It appears clear from the terms of article 41 of the Vienna Convention, which recognizes that all persons having diplomatic privileges and immunities must respect the laws of the host State, that the host country may promulgate procedures regulating parking for diplomats.

9. In its paragraph 2, the Parking Programme provides that it enters into force on 1 November 2002. While accepting that the authorities of the host country may promulgate provisions relating to parking, a number of delegations at the 212th meeting of the Host Country Committee objected to this fait accompli and questioned the legality of the promulgation of procedures affecting the diplomatic community without prior consultation with that community. It was noted that such action could hardly be considered as facilitating the work of the missions. The representative of the host country took the view that it had taken account of all comments conveyed by Member States, by the Committee and its Working Group and by the Legal Counsel in 1997.

10. I note that the controversial 1997 New York City Diplomatic Parking Programme had been submitted to the Committee prior to its finalization.[2] While it is regrettable that the host country did not present its Parking Programme to the Committee in draft form, I cannot conclude that the issuance of parking procedures without prior consultation is a violation of international law per se as long as the Parking Programme is not retroactive in its operation and as long as its procedures give a reasonable period of time prior to going into effect to enable missions to readjust their affairs in the light of the new arrangements and requirements.

11. On the other hand, it would seem to me that there is a legal obligation on the host country to take account of complaints by missions and to attempt in good faith to resolve problems that might arise in the actual operation of the Parking Programme. This obligation arises from article 25 of the Vienna Convention, which provides that "the receiving State shall accord full facilities for the performance of the functions of the mission." This clearly includes an obligation to consider in good faith serious difficulties affecting missions that may arise as a result of the operation of the Parking Programme. Indeed, the host country, in relation to the 1997 Programme, indicated that "if the City did not honour its stated obligations, the United States Department of State would act accordingly".[3] I take it for granted that this undertaking is still in force and that the host country would not withdraw any facilities if a mission could reasonably demonstrate that, whatever the result of the City's review and appeal process, it would be inappropriate to act on the City's decision. In my view, therefore, there is a legal obligation on the host country, which was recognized in its statement to the Committee in 1997, to act

reasonably in all the circumstances and to reach an independent conclusion in case the City's application of the procedures contained in the Parking Programme would lead to an unjust result. The latter obligation is also recognized in paragraph 1 of the Parking Programme, which explicitly states that "all elements of the programme are essential to meet these objectives [including facilitating the conduct of the business of the permanent missions and the Organization] and all elements must be applied fairly and without discrimination."

12. Against this background, it is important that missions immediately register complaints in writing to the competent City or host country authorities or to the Committee (see also para. 19 below).

B. Definitions (para. 3 of the annex to A/AC.154/355)

13. The Parking Programme is silent with respect to the scope of the rights and obligations of permanent observer missions and offices of permanent observers. It is also silent on the question of the private residences of the permanent representatives. Given the status of such residences and the stated intent of the Parking Programme to facilitate the conduct of the business of the permanent missions, I assume that the Programme does not affect parking facilities currently enjoyed by permanent representatives in respect of their private residences. However, if these facilities are affected, I must reserve my position; the question of the necessity of such facilities for the performance of the functions of the missions raises complex issues of fact and law, and I do not at present have sufficient factual information to be able to examine the matter.

C. Reporting and resolution of notices of parking violation (paras. 4 to 17 of the annex to A/AC.154/355)

14. The Parking Programme includes a system of monthly reporting to missions listing outstanding notices of alleged violations of the parking laws of the City which have resulted in the issuance of a ticket, as well as each vehicle that has three or more unsatisfied or unanswered outstanding notices. This procedure affords missions the opportunity to challenge the issuance of those tickets through a voluntary review process. Missions may seek a review by a Diplomatic Parking Review Panel and, if dissatisfied with the result, submit an appeal to a Diplomatic Parking Appeals Panel. The Programme explicitly provides that the mission may make a submission to the review and appeals bodies directly or through the good offices of the United States Mission. Paragraph 17 of the Parking Programme explicitly states that nothing in the Parking Programme constitutes a waiver of any privileges or immunities, nor does it constitute acceptance of the civil or criminal jurisdiction of the City or State of New York. The Parking Programme specifically provides that utilization of these procedures is a mere acceptance of the City's offer of consensual dispute resolution.

15. Paragraph 15 of the Parking Programme provides that the United States Department of State will take all appropriate action should a registrant abuse the appeals process. The action to be taken is undefined, as is the term "abuse". I interpret this paragraph in the light of paragraph 17 of the Parking Programme, which emphasizes that the privileges and immunities of missions are unaffected, and in the light of the international legal obligations of the United States. Thus, any action under paragraph 15 must be consistent with the privileges and immunities of missions and their diplomats (see also para. 11 above).

16. In my view, given the many complaints made to the Committee over the years that many tickets have been improperly issued, it would seem reasonable for the host country to institute procedures by which such complaints could be reviewed. Of course, the host country may not introduce procedures which in effect compel submission to its civil jurisdiction unless it relates to one of the exceptions set out in article 31 of the Vienna Convention, which exceptions do not apply to alleged traffic violations. The legal issue is whether the system of dispute resolution introduced by the Parking Programme violates the obligations of the host State as reflected in the Vienna Convention.

17. I first note that the Parking Programme *specifically* provides that the procedures are consensual and do not constitute a waiver of the privileges and immunities of the mission or diplomat concerned. Admittedly, the use of the procedures of the City, and their complex forms which must be filled out in English, may give the appearance of submission to the local jurisdiction, even though in law there is no such submission to the jurisdiction of the authorities of the

host State. It is thus very important that the Programme provides that missions may submit their complaints by *diplomatic note* to the United States Mission, and that the United States Mission will submit the matter to the City authorities. In view of this important safeguard, I consider that the system of reporting and voluntary resolution of notices of parking violation respects the obligations of the host State under international law.

18. One element that needs to be clarified is when action can be taken based on notices of parking violation that are unanswered. The Parking Programme provides that action can be taken if notices are unanswered for more than seven (7) days after decision (cf. paras. 12 and 18 (a) of the Parking Programme). However, under paragraphs 13 and 14 of the Programme, the registrant would have 30 days to appeal a Diplomatic Parking Review Panel conclusion. If the appeal were unsuccessful, there would be another seven-day period for payment (para. 16 of the Programme). Obviously, the relation between the time limits stipulated in paragraphs 12 and 14 would have to be clarified.

19. I have already pointed to the close link between the way in which the Parking Programme will work in practice and the obligations of the host country vis-à-vis the diplomatic community (see para. 6 above). It is therefore essential to distinguish (a) the mere establishment of procedures to ensure that the Programme operates fairly and in a non-discriminatory manner from (b) the way in which those procedures operate in practice. Although the procedures seem a reasonable effort to facilitate the work of missions in adapting to the requirements of local law, the real test will be in the manner of their operation in practice. Thus, missions should promptly register in writing, and in detail, any complaints they may have regarding the issuance of tickets. It is for each mission to determine whether this is done by using the City forms or by diplomatic note to the United States Mission, as indicated in paragraph 17 above. The mission should also promptly register any complaints that it has concerning the results of the review process since the only way that the Committee can assess the effectiveness of the Parking Programme is through *specific documented accounts*. General positions and anecdotes of grievances are insufficient for an objective evaluation of the consistency of the operation of the Parking Programme with the legal obligations of the host country to facilitate the work of missions.

20. In this context, I feel obliged to make the following observation. If there are too many tickets issued that do not stand the test of appeal, then it is obvious that those who have to take action through the appeals procedure are subjected to a process that may be unreasonably burdensome. Therefore, if the application of the Parking Programme were to produce too many errors or multiple ticketing of the kind that has been reported in the past, the whole Programme risks being discredited. Consequently, it is of the utmost importance that not only the members of the diplomatic community but also the police officers and traffic enforcement agents of the City apply the Programme correctly. Since the whole activity is based on computer registration, I assume that every notice of parking violation can be related to an individual officer or agent. This would make it possible for the New York City Police Department to identify police officers and traffic enforcement agents who may have greater difficulties than others in applying the system correctly and without discrimination.

D. Non-renewal and non-issuance of registrations (paras. 18 to 22 of the annex to A/AC.154/355)

21. The Parking Programme provides that the United States State Department will not renew the registration of "A" and "D" series vehicles that have three or more unanswered or outstanding tickets for a period of 100 days or tickets unsatisfied for more than 7 days after decision. In addition, the Department of State will not issue or renew the registration of any other vehicle to the same registrant until the registrant answers or otherwise satisfies the outstanding tickets.

22. As I stated in my 1997 opinion, the ticketing of diplomatic cars parked in violation of the applicable laws and regulations is not, by itself, objectionable under international law and is intended to notify the driver of such violations as long as such tickets are justifiable, non-discriminatory and in full compliance with all laws and regulations.[4]

23. That opinion also noted that the authorities of the host country, at the federal, state and municipal levels, have the right and the authority to establish the laws and regulations governing the use of diplomatic vehicles, parking and related matters. Such laws and regulations in any country are aimed at ensuring public

safety and fair access to parking for all without discrimination, minimizing congestion and the like. However, the removal of licence plates during the period of their validity would be an enforcement measure and inconsistent with the relevant provisions of article 31 of the Vienna Convention and articles IV and V of the 1946 Convention and article V of the Headquarters Agreement. The opinion further noted that such measures "would be inconsistent with the host country's obligation to facilitate the functioning of the missions accredited to the United Nations and of their members."[5] This view was accepted by the Committee and generally by the host country.[6]

24. The Parking Programme does not purport to remove valid diplomatic plates. It is designed to enhance compliance through the non-renewal of expired diplomatic plates and the non-issuance of new diplomatic plates.

25. It is my view that the non-renewal of the diplomatic plates of a vehicle at the expiration of the registration period does not constitute an enforcement measure. This is so because the issuance of the diplomatic plates was initially subject to the authorization of the host country and for a limited period of time. The same reasoning applies to the non-issuance of new diplomatic plates. I recall in this context that if this situation arises, not only the City authorities but also the United States State Department would have come to the conclusion that the registrant had failed to comply with the provisions in question of the Parking Programme. It should also be noted that, in accordance with paragraph 18(b) of the Parking Programme, each mission will always be permitted to have at least one vehicle with diplomatic plates notwithstanding the number of parking tickets accumulated under the Parking Programme. Furthermore, although a registrant may lose the diplomatic plates on a vehicle that has accumulated three or more unanswered or unsatisfied outstanding tickets, such registrant does not lose the right to drive. Considering these elements together, the measures set out in the Parking Programme do not amount to an enforcement measure equivalent to seizure of the vehicle or seizure of diplomatic plates during the period of their validity.

26. In accordance with article 25 of the Vienna Convention, the host State is obliged to accord to diplomatic missions full facilities for the performance of their functions. Moreover, section 27 of the Headquarters Agreement requires that the Agreement be interpreted in a way that enables the United Nations to fully discharge its responsibilities and purposes. Access to convenient transport by missions is one of the facilities that is essential for the permanent missions to the United Nations to perform their functions and thus for the United Nations to fully discharge its responsibilities and purposes.

27. The Parking Programme guarantees diplomatic plates for at least one vehicle for each mission regardless of the number of parking tickets accumulated and provides that no action will be taken in respect of diplomatic plates until the expiration of their validity period. Moreover, the grounds for non-issuance or non-renewal are known in advance. In the light of this and on the assumption that there is ample and effective opportunity to contest tickets issued unjustly or in error, it is in my view difficult to conclude that the non-renewal or non-issuance of diplomatic plates in such circumstances violates the general obligations of facilitation set out in article 25 of the Vienna Convention and in section 27 of the Headquarters Agreement. This conclusion is further predicated on my assumption that, in order to ensure fairness, the host country would not take any action against a mission if that mission could reasonably demonstrate that such action would be unjust in a particular case, *irrespective of the outcome of the City's review and appeal procedures*. In that event, the host country has an obligation under international law to reach an independent conclusion and must not rely solely or automatically on the conclusion of the review and appeal process of the City of New York. This is also recognized in paragraphs 17 and 48 of the Parking Programme.

28. I again emphasize that my conclusion is based on the text of the Parking Programme, which promises a fair and effective method for the disposal of tickets unjustly or mistakenly issued. If that promise fails to materialize, it will be necessary to revisit the issue. In other words, the legality of the Parking Programme ultimately depends in large measure on how it will operate in practice.

29. In the light of the fact that the title of part D and the provisions of paragraph 18 of the Parking Programme relate solely to the non-renewal and non-issuance of diplomatic plates, I was concerned to see the inclusion of the words "suspended" and "suspension" in paragraphs 19 and 20 of the Parking

Programme. I assume that these words are included in error since the host country has repeatedly indicated that the Parking Programme takes account of the comments that I made in 1997 that diplomatic plates cannot be suspended or taken away during their period of validity.

30. Paragraph 22 of the Parking Programme provides that the United States Department of State will apply the provisions set out in sections 234.2 and 234.3 of the Foreign Affairs Manual in respect of the amounts outstanding that led to the non-renewal of the registration. Appendix I to the Parking Programme, entitled "Handling of notices of parking violation issued before November 1, 2002 for diplomatic vehicles", applies the same regime to notices outstanding prior to the introduction of the new Parking Programme. Section 234.2 deals with the failure to meet just financial obligations. It provides that where a "debt or civil liability" is owed and the matter has been brought to the attention of the mission or head of the mission and if settlement of the debt is not reached within a reasonable period, which is not to exceed six months, continued reliance on immunity to evade the debt will affect a mission member's continued acceptability in the United States. In order to avoid a peremptory or mandatory regime, the consent of the mission would be required to transform the face value of outstanding parking tickets, and any "interest" accumulated thereon, into a "debt" or a "civil liability", especially given the possibility that such tickets had been issued unjustly or in error. If the host Government accepts this interpretation, paragraph 22 and appendix I of the Parking Programme accord with the responsibilities of the host State under international law.

E. Towing (paras. 23 to 25 of the annex to A/AC.154/355)

31. The Parking Programme provides that the City of New York will tow a vehicle subject to this program only when:

> "(a) It is parked illegally in a manner that presents a hazard to health and safety;
>
> "(b) The vehicle's registration has not been renewed or was not issued;
>
> "(c) The vehicle's licence plates have been recalled by the Department of State because the vehicle is not properly registered or insured;
>
> "(d) The vehicle's registrant is no longer properly accredited or the registrant's diplomatic duties have been terminated;
>
> "(e) The vehicle displays lost or stolen licence plates; or
>
> "(f) The United States Department of State has authorized the towing of such vehicle after inquiry from the City." (para. 23)

The Programme then lists some 18 specific violations that will justify towing.

32. In my view, the towing of diplomatic vehicles in circumstances of public safety is not per se objectionable. As a practical matter, it may be necessary to tow a car to a place of safe keeping, and this also is not legally objectionable. However, a diplomatic car towed to a place of safe keeping must be made available at any time it is reclaimed, and the payment of a fine or charge cannot be made a precondition for its recovery.[7] The "towed vehicle procedure" in appendix IV of the Parking Programme does not contradict these principles, since diplomatic vehicles will be released on demand and without charge if properly registered and insured.

33. The towing of vehicles without valid diplomatic plates or without valid registration or with lost or stolen plates seems unobjectionable. Provided that police officers and traffic agents act on the basis of accurate and up-to-date information, towing of vehicles registered to persons who are no longer accredited or whose diplomatic duties have been terminated also raises no objection. However, it is assumed that the United States State Department would only authorize the towing of a vehicle that the City seeks permission to tow under paragraph 23(f) of the Programme if such towing would be permitted under international law.

F. Removals for public hazards (para. 26 of the annex to A/AC.154/355)

34. The Programme also envisages the removal of vehicles in cases of public hazards. The removal of vehicles in cases of public hazards, even where a notice of parking violation does not apply, is not per se objectionable. Such removal is not only necessary to

ensure public safety, but may also protect the vehicle itself.

G. Diplomatic parking spaces and decals (paras. 27 to 44 of the annex to A/AC.154/355)

35. The Parking Programme provides that each Mission will be assigned two designated parking spaces for use by its vehicles with specific non-transferable "service vehicle decals". The service vehicle decal will also permit the mission to use those vehicles to pick up and drop passengers in the same manner as a for-hire vehicle. Each Mission will receive one non-transferable "delivery vehicle decal". There will also be 35 spaces in the city for use of mission vehicles identified with such a delivery vehicle decal. The use of such decals is prospective starting on 1 November 2002. There are complex provisions to obtain temporary designations for replacement vehicle decals. The Parking Programme also provides for the reporting and expeditious towing of unauthorized vehicles parked in a mission's designated spaces.

36. Service and delivery decals may be withdrawn in the event of "abuse", which term is undefined. A mission will lose one parking space if a mission has 40 to 64 unanswered or outstanding notices of parking violation issued on or after 1 November 2002, and will lose its two spaces if there are 65 or more violations accumulated after that date, provided that the loss of a second space will not occur before 1 August 2003. The spaces will be reinstated once the outstanding parking fines and costs of the restoration of the spaces are paid.

37. Paragraphs 38 and 41 of the Parking Programme provide for actions to be taken, including withdrawal of decals, in case of "abuse". In the light of paragraph 17 of the Parking Programme and consistent with the international obligations of the United States, such action may not violate the privileges and immunities of missions or their diplomats (see also para. 15 above). It may be argued that, in the light of the possibility that a mission may lose both of its designated parking spaces, the host country would not be in fulfilment of its obligation to facilitate the work of the mission. To the extent that the Parking Programme provides two free on-street parking places to commence and as the grounds for losing these spaces are known in advance and to the extent that there is ample and effective means to contest tickets issued unjustly or in error, the fact that a mission may lose free on-street parking places is not inconsistent with the obligations of the host country under international law.

38. Although the rationale for the non-transferability of the delivery and service vehicle decals is not explained, there is no legal objection to such non-transferability. I am compelled to note, however, that as a practical matter the transferability of the decals would enable a greater number of diplomats to utilize their mission's parking spaces and obviate the need for the utterly complex temporary replacement mechanism set out in the Parking Programme.

39. Moreover, the host country accurately notes that on-street parking is very limited in Manhattan and that there is ample commercial parking in the City, albeit very expensive, and that the United Nations garage is available to diplomatic vehicles. Given the realities of Manhattan it is hard to disagree that free on-street Manhattan parking is in the nature of a privilege rather than a right which flows from the general statements on facilitation contained in the Vienna Convention and the Headquarters Agreement. It would thus seem that the host country may regulate the granting of assigned free on-street parking, provided that such regulations are non-discriminatory and applied fairly.

40. Again, I emphasize that the Parking Programme is not per se legally objectionable. However, the way in which it operates in practice, in particular in relation to the withdrawal of parking spaces, is highly relevant to a final assessment of the Programme, which can only be made after it has been tested in particular cases. It is thus important that missions immediately report any problems, complaints or objections in writing to the competent authorities.

H. Orientation (paras. 45 to 47 of the annex to A/AC.154/355)

41. The United States Mission, the City Commission for the United Nations and the Department of Finance of the City of New York, which is responsible for the Parking Programme, will co-chair and participate in orientation sessions with the diplomatic community to answer questions that may arise as a result of the implementation of the Programme. The Police Department will develop appropriate directives to ensure that all police officers and traffic enforcement

agents administer the Parking Programme correctly and courteously.

42. From what I have said throughout this opinion concerning the crucial importance of an assessment of the actual operation of the Parking Programme, it is clear that the orientation and directives described should provide an effective follow-up forum, to ensure that the Parking Programme is properly applied by the City authorities. To this end a periodic review by the Committee would also serve as another forum. In connection with directives, I note the affirmation in paragraph 46 of the Programme that police officers and traffic enforcement agents will continue to extend every courtesy and consideration to vehicles bearing "non-transferable" service and delivery vehicle decals and trust that the same courtesy will be extended to all vehicles with diplomatic plates.

I. Reservation of rights and responsibilities (para. 48 of the annex to A/AC.154/355)

43. The Parking Programme provides that it does not affect a registrant's rights, responsibilities, privileges and liabilities under applicable domestic and international law. It also does not affect any rights the competent United States authorities have under applicable law.

44. This provision confirms that while diplomatic registrants have responsibilities and, to the extent that they are mutually agreed upon, liabilities under local laws and regulations, such laws and regulations, including the Parking Programme, cannot violate the rights and privileges accorded to missions and diplomats under applicable international legal instruments. Moreover, this provision, read in conjunction with paragraph 17 of the Parking Programme, further confirms that the payment, on a voluntary basis, of traffic and parking violations does not constitute a waiver of privileges and immunities, exemptions and entitlements under the applicable international conventions.

III. Conclusions and recommendations

45. The normative provisions of the Parking Programme do not give rise to any objections from an international law point of view. However, the manner in which the Parking Programme operates in practice will have legal implications and should therefore be subject to periodic review by the Committee. I would therefore recommend that the Committee review and assess the actual operation of the Parking Programme after a reasonable period of time. To ensure an effective review, such assessment should be based on actual experiences and specific problems with detailed information, as opposed to anecdotal accounts or hypothetical scenarios. In the meantime, if a mission could reasonably demonstrate to the host country that, notwithstanding the outcome of the City's review and appeal process, the outstanding tickets for parking violation were issued unjustly or in error, the host country should, as follows from applicable international law and as set out in paragraph 48 of the Parking Programme, ensure that the Mission or its diplomat is not deprived of any facilities under the Parking Programme. Therefore, the question whether the Parking Programme is in conformity with international law will ultimately depend on the host State's acceptance of the assumptions and interpretations I have made in paragraphs 13, 29 and 30 of this opinion, and ultimately on the manner in which it is applied in particular cases.

Notes

[1] In the latter connection, I note that a number of permanent missions have instructed their diplomats to routinely pay their justifiable parking tickets.

[2] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 26* (A/52/26), paras. 29-76.

[3] Ibid., para. 65. See also para. 61 to similar effect.

[4] A/AC.154/307, para. 25.

[5] Ibid., paras. 30 and 31.

[6] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 26* (A/52/26), paras. 50-59.

[7] A/AC.154/307, para. 27.

Appendix

International Law on privileges and immunities

(From the annex to A/AC.154/307, paras. 6-20, endnotes omitted)

6. In the United States, the legal status of permanent missions of Member States and their personnel, and of the United Nations and its personnel, and the scope of their privileges, immunities, exemptions and facilities are governed, in various degrees of detail, by Articles 104 and 105 of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations (the so-called "General Convention"), the 1947 Headquarters Agreement between the United Nations and the United States, as well as by provisions of the 1961 Vienna Convention on Diplomatic Relations that are applicable mutatis mutandis.

A. Charter of the United Nations

7. According to Article 105 (1) of the Charter of the United Nations "[t]he Organization shall enjoy in the territory of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." Furthermore, pursuant to Article 105 (2), "[r]epresentatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." The detailed application of these general principles is, pursuant to Article 105 (3) of the Charter, effected through the 1946 Convention, to which the United States became a party in 1970, and, in the particular case of the host country, also through the Headquarters Agreement.

B. 1946 Convention on the Privileges and Immunities of the United Nations

8. The privileges and immunities of representatives of Member States are set out in article IV of the 1946 Convention. They are entitled, inter alia, to immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their capacity as representatives (section 11 (a)) and to such other privileges, immunities and facilities "as diplomatic envoys enjoy" (section 11 (g)).

9. The United Nations, its property, funds and assets enjoy immunity from every form of legal process under article II of the 1946 Convention (section 2). Furthermore, the property of the Organization "shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action" (section 3).

10. In addition to the functional immunities and privileges of all officials of the Organization specified in article V, section 18, the Secretary-General and all Assistant Secretaries-General (now Under-Secretaries-General and Assistant Secretaries-General) are entitled to "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law" (section 19).

11. Under the final article of the 1946 Convention, the Member States parties thereto are expected to be in a position under their own law to give effect to its terms (section 34).

C. 1947 Headquarters Agreement

12. Section 15 of the Headquarters Agreement specifies:

> "(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary;
>
> "(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned;
>
> "...
>
> "shall, whether residing inside or outside the Headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions

and obligations, as it accords to diplomatic envoys accredited to it."

13. As stated in paragraph 13 of a note dated 17 June 1983 addressed to the Host Country Committee by the Legal Counsel setting out the views of the Organization concerning the applicability of section 205 of the United States Foreign Missions Act to the missions accredited to the United Nations, "[i]t follows from article V, section 15, of the Headquarters Agreement that the relevant provisions of general international law on the question of privileges and immunities also apply to the resident representatives to the United Nations and their staffs."

14. Finally, section 27 of the Headquarters Agreement requires that it be construed "in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently, to discharge its responsibilities and fulfil its purposes."

D. 1961 Vienna Convention on Diplomatic Relations

15. The contemporary principles, norms and rules governing diplomatic privileges and immunities are codified in greater detail in the 1961 Vienna Convention on Diplomatic Relations, to which the United States is a party.

16. As stated in the above-mentioned note by my predecessor, "the concept of diplomatic privileges and immunities embodied in the Vienna Convention sets forth, inter alia, the rights and duties of a receiving or host State". I would like to add to this stipulation that, by the very same concept, rights and duties are also established for the sending States and for members of the staffs of their missions. By the same token, certain rights and duties under the Vienna Convention apply mutatis mutandis to the United Nations, although the Organization is not a party to that instrument.

17. Article 41(1) of the Vienna Convention unequivocally provides that "it is the duty of all persons enjoying such [diplomatic] privileges and immunities to respect the laws and regulations of the receiving State." The Convention, however, indicates that this duty is "without prejudice" to the privileges and immunities of diplomatic agents.

18. The receiving State, in this case the host State, is, under article 25 of the Vienna Convention, obliged to accord to foreign diplomatic missions full facilities for the performance of their functions. The legislative history of this provision, as reflected in the report of the International Law Commission on the draft articles on diplomatic intercourse and immunities, indicates that "the receiving State (which has an interest in the mission being able to perform its functions satisfactorily) is obliged to furnish all the assistance required, and is under a general duty to make every effort to provide the mission with all facilities for the purpose." It is to be recalled that in his above-mentioned note, the Legal Counsel took the position that "[t]he concept of diplomatic privileges and immunities embodied in the Vienna Convention ... [foresees] among these duties ... the obligation to provide every assistance to foreign diplomatic missions for the performance of their functions ..."

19. Article 22(3) of the Vienna Convention specifically provides that "means of transport of the mission shall be immune from search, requisition, attachment or execution." These immunities constitute elements of the notion of inviolability. Furthermore, in accordance with article 30(2) of the Convention, the property of a diplomatic agent shall enjoy inviolability. The legislative history of the latter provision indicates that the drafters of the Convention were of the view that "so far as movable property is concerned ... the inviolability primarily refers to goods in the diplomatic agent's private residence; but it also covers other property such as his motor car ..."

20. Most importantly, article 31(1) of the Vienna Convention provides that a diplomatic agent shall enjoy immunity from the criminal, civil and administrative jurisdiction of the host State. While immunity from criminal jurisdiction is complete, immunity from civil and administrative jurisdiction is subject to exceptions which are not relevant to the present analysis. However, it should be noted that the Convention prescribes that a diplomatic agent "is not obliged to give evidence as a witness" (article 31(2)), and "no measures of execution may be taken in respect of a diplomatic agent" (article 31(3)).